Wake Forest Jurist

CARSWELL HALL

The Jurist is proud to feature a new view of the law building which was named in honor of the late Gov. T. Carswell, prominent Charlotte attorney. The new wing of the building is on the left of this photo. A full color print on high quality coated paper suitable for framing is available from the Jurist for $5. Orders for the photograph should be sent to:

WAKE FOREST JURIST
WAKE FOREST UNIVERSITY SCHOOL OF LAW
WINSTON-SALEM, N.C. 109

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Inside: ERA - PRO AND CON

WAKE FOREST JURIST

Vol. 3, No. 2 Spring, 1973

STATEMENT OF POLICY

The Wake Forest Jurist is published by the Wake Forest School of Law in co-operation with the Student Bar Association and is mailed free of charge to Alumni of the School of Law. One of the primary functions of the Jurist is to provide a meaningful link between the School of Law and its alumni. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

A MESSAGE FROM THE DEAN

The outstanding support that Law Alumni are giving to their School continues to be a source of much pride. Through March 15 of the current fiscal year (July 1, 1972 to June 30, 1973) the School of Law has received over $90,000 in alumni contributions. That amount has come from 354 alumni, or just slightly more than 25% of all living graduates of the School. My sincere thanks go to all those who have contributed.

In addition to gifts from alumni, the School of Law has received financial support during the current year from foundations and other friends amounting to approximately $70,000. As in the case of alumni gifts, most of these contributions represent the payment of pledges for the recently-completed addition to Carswell Hall. (Those of you who have not yet viewed the School's splendid new facilities are cordially invited to do so at your earliest convenience; they must be seen to be fully appreciated.)

The initial Law School Annual Fund campaign, launched in the fall of last year, has produced unrestricted funds for the School equivalent to the annual income on nearly half a million dollars – and this despite the fact that many alumni are still in the process of fulfilling pledges to the building fund. Gifts are still coming in and a final report will be made later, but through March 15 almost $27,000 in annual giving had been contributed by 187 alumni, just over 13% of the total number of graduates. It is particularly encouraging to note that our most recent graduating class, the Class of 1972, is leading the field in total number of contributions to the Annual Fund. The Class of 1938 is setting the pace in total amount given. The Law School Partners Program, a new program incorporated into the Annual Fund drive, now has 111 members, 24 of whom have joined at the $500-and-above level. All in all, we think that the Annual Fund is off to an excellent start.

Dean Bowman

Within the past four months the Law Library has received two gifts which have substantially improved the book collection, both in content and in numbers. A gift from the Jefferson-Pilot Corporation of 548 volumes included complete sets of the American Digest System, American Jurisprudence Trials, American Law Reports Federal, Barron and Holtzoff's Federal Practice and Procedure, Wright's Federal Practice and Procedure, and Federal Rules Decisions. The more recent gift, which came from the library of the late Judge Johnson J. Hayes, contains 960 volumes. It includes a number of basic treatises in addition to several sets of reports. Included in this group are 267 volumes of Federal Reporter 2d, 240 volumes of Federal Supplement, and 73 volumes of United States Supreme Court Reports, Lawyers' Edition. We are grateful to the donors of these most welcome additions to the Library.

The demand for admission to law school continues to be high. February 1 was the application deadline for the September class, and by that date we had received almost 1200 applications. There are approximately 130 places in the September class. Once again, the

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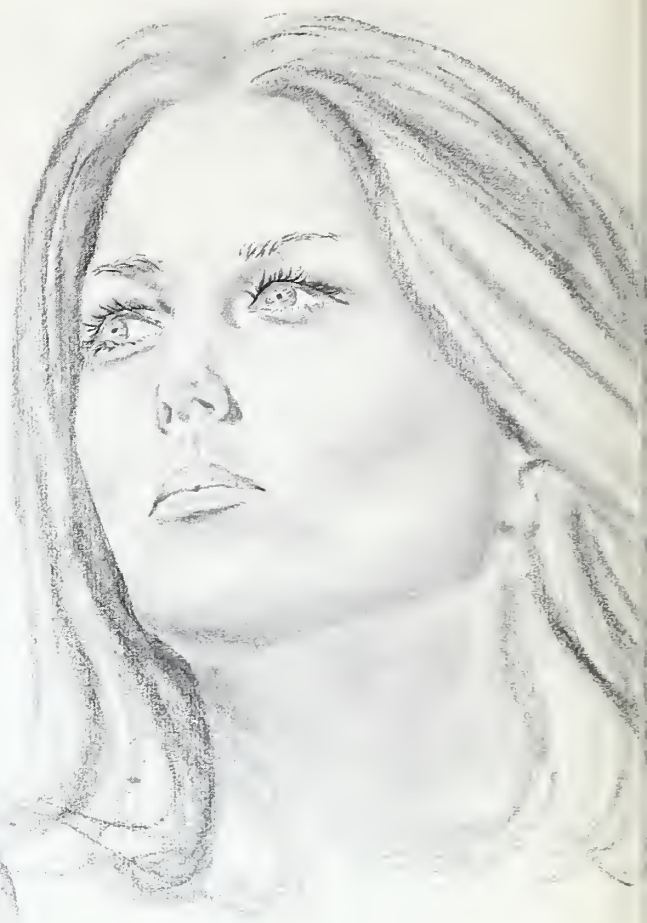
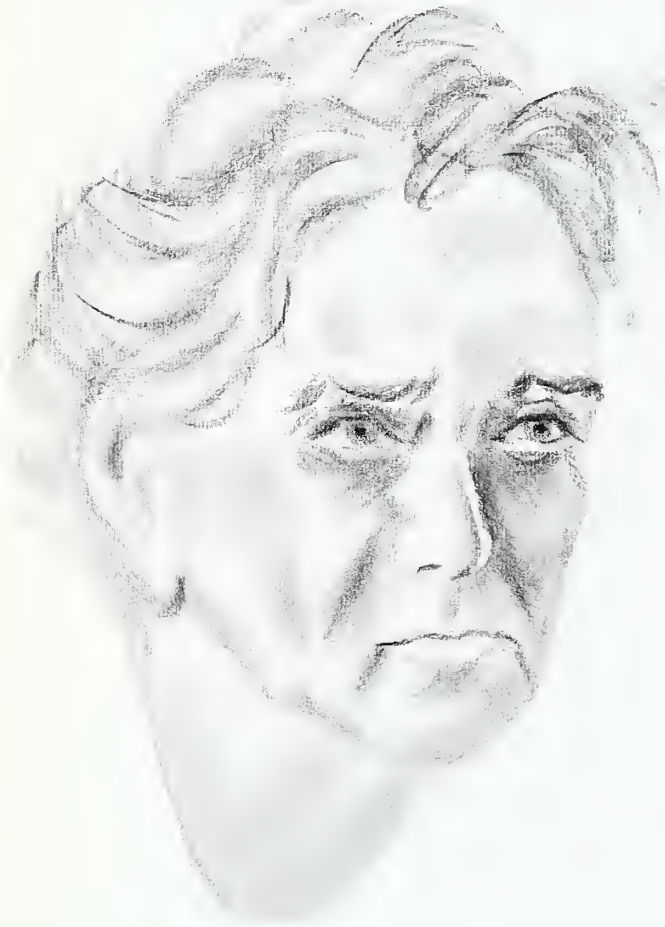
EQUALITY OF RIGHTS
UNDER THE LAW
SHALL NOT BE DENIED
OR ABRIDGED BY THE
UNITED STATES OR
BY ANY STATE ON
ACCOUNT OF SEX...





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A MENDMENT

AN ARGUMENT IN FAVOR OF THE EQUAL RIGHTS AMENDMENT

By Meyressa H. Schoonmaker

The proposed Twenty-seventh Amendment to the United States Constitution reads:

Section 1: Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

Section 2: The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3: This amendment shall take effect two years after the date of ratification.

Proposed constitutional amendments providing for equal rights for men and women have been introduced in nearly every Congress since 1923, shortly after ratification of the 19th Amendment extending the right to vote to women. North Carolina did not ratify the Amendment to give women the right to vote until 1971, which may be indicative of a gentlemanly attitude to protect women from the evils of politics.

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THE ERA-A SIMPLISTIC APPROACH TO COMPLEX PROBLEMS

By Rhoda B. Billings

The proposed amendment to the federal constitution known popularly as the ERA has prompted more emotional debate than any single issue in the past decade with the possible exception of the Vietnam War. And yet, I feel that the ERA is perhaps less fully understood than it was before the debate began, largely because of some of the misconceptions promulgated by the proponents of the amendment.

Before anyone can begin an intelligent discussion of the ERA, he should know exactly what the proposed amendment says. It is in three parts and reads as follows:

> Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
>
> Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this Article.

(continued on page 11)

(Dean's Message, continued from page 3)

School will find it necessary to turn away large numbers of applicants with good qualifications for the study of law. We cannot, however, admit any greater number of students than we presently are taking without further expansion of our faculty and physical plant. And looking at the other end of the pipeline, it seems reasonably clear that the law schools are producing as many graduates as the profession is capable of absorbing. One-third as many students are enrolled in law school as there are licensed members of the bar; this is true in North Carolina as well as nationally. Whether or not the current admissions crunch is a transitory phenomenon – and it well may be – it seems doubtful to me that the enlargement of law school enrollments above their present level would be a wise response to it.

A number of able members of this year's graduating class still are not placed. Those of you interested in interviewing prospective associates are urged to contact our Placement Director, Mr. Marvin Pope, here at the School. He will be glad to provide you with resumes and to arrange for interviews either at the School or in your offices.

It is a particular pleasure to announce the addition to our faculty of Professor Sylvester Petro, who comes to us from a distinguished career at New York University School of Law. He will begin teaching here in September of this year. Professor Petro is an expert in Labor Law and has written widely in that field. One of his books, *The Labor Policy of the Free Society*, has been described by Senator Sam Ervin as being "The finest book I know on the subject of freedom." An article about Professor Petro appears elsewhere in this issue of the Jurist.

The annual Law Day Banquet will take place on Saturday, April 28. I hope to have the pleasure of seeing many of you on that occasion.

LAW SCHOOL NEWS

Robert E. Lee

Dr. Robert E. Lee was invited to address a public meeting of the Joint Constitutional Amendments Committee of the House and Senate of the North Carolina General Assembly in Raleigh on February 1, 1973. According to Senate Committee chairman Fred Folger, D-Surry, the hearing was intended to give legislators unbiased information about the proposed equal rights amendment. Lee told the committee if that was the case, "I was brought here under false pretenses." Unaccustomed to being restrained in the expression of his opinions, Lee proceeded to deliver his prepared remarks which were met by hissing, booing, and laughter from the highly partisan, overflow audience of about 500, most of whom were women wearing "ERA Yes" buttons. Unperturbed by the rude treatment given to him by the proponents of the ERA Dr. Lee calmly delivered a stinging critique of the projected effects of the Equal Rights Amendment on the laws of North Carolina.

After having described the ERA as "a short and simple sentence, with a beautiful bell-like

ring"; and posing the rhetorical question "who could possibly object to it?", he suggested that the women of North Carolina would lose more by the amendment's ratification than they could possibly gain. The ERA would place the North Carolina General Assembly in a "legal straight-jacket" Lee said, and every State and Federal law that makes any distinction between the sexes would be nullified. "And it will be the highest of the Federal Courts saying so—the same court that says its unconstitutional to say a prayer or read the Bible in a public school . . . that has had no difficulty in reading into the Fourteenth Amendment a requirement that school children must be bussed even in school districts which are concededly not assigning children on a discriminatory basis."

Dr. Lee suggested other ways by which important legal rights may be obtained on behalf of women. First, greater use could be made of the equal protection clause of the Fourteenth Amendment. He also advocated a continuation of the "piece-meal process" which he deems to have been highly successful both in North Carolina and on the national level. "There is not an equality of the sexes under the law" Lee contended. "The law has in many places gone to great length to discriminate on the basis of sex. And in nearly every instance the discrimination has been in favor of the woman. In the opinion of the speaker there is probably no place in the world where a woman has greater rights under the law than in North Carolina." Then, Dr. Lee, who had as he expressed it "done his homework," documented and supported this contention citing many specific provisions of North Carolina's laws more favorable to women than men.

The ERA, Lee said, "would destroy by one fell swoop, valuable rights now possessed by women in North Carolina and cause new problems." The theory of equality is not worth so high a price he said, and he warned the legislature against voluntarily handing over to the Supreme Court of the United States additional self determining rights. Dr. Lee concluded his arguments against the ratification by saying: "The traditions, customs, and usages of society have accorded to women both advantages and disadvantages which are sometimes not identical with those of men. These differences cannot be changed by a constitutional amendment. Inasmuch as they were not created by law, they cannot be abolished by law. They can be altered only by changed attitudes of the society which imposes them."

Charles R. Brewer

STUDENT BAR ASSOCIATION:

On March 12, 1973, the Law School was honored with the visit of former Secretary of State Dean Rusk, who met with faculty members, delivered an address on the impact of international law on our daily lives, and remained for a reception by students and faculty. The day was highlighted somewhat by the arrival of Ambassador McClintock, the United States Ambassador to Venezuela, who was flown to Winston-Salem by the Air Force for an afternoon conference with Mr. Rusk.

Our speaker for Law Day, to be held on April 28, will be Mr. William C. Klaus, Chancellor of the Philadelphia Bar and Chairman of the American Bar Association's Committee on Legal Aid and Indigent Defendants. His topic is expected to revolve around the future of legal aid services in the United States during the next four years. Law Day will be held at the Winston-Salem Hilton Inn, and we sincerely invite you to attend. More details on the program will be published as plans near completion.

W. Riley Hollingsworth, Jr.
Chairman, Student Bar Association

Committee for Minority Recruitment

On March 19, 1973, the Committee for Minority Recruitment (CMR) was funded $400 from the Law Students' Division of the American Bar Association. The award calls for matching fund to be allotted to CMR from the Law School.

The Committee was established in order to recruit minority students interested in attending law school for the academic year 1973-74. In its entirety, the recruitment was conducted throughout the State of North Carolina.

The Committee is unique, in the sense that it was formed apart from the traditional extra-curricular activities of the law school. However, the membership of sixteen students is representative of the SBA, the legal fraternities, and independents. Too, the SBA was instrumental in the preliminary funding of the CMR, pending the LSD award.

Six goals have been established by the CMR: (1) to enable the community to have a more understanding representative in legal proceedings; (2) development of a source of pride; (3) development of a better knowledge of the legal process; (4) the attainment of objectives which have been traditionally closed to minority students; (5) employment of minority students, both before and after graduation; (6) development of a more open opinion in the community of the American legal process.

Of the eleven predominantly Black colleges and universities in the state, eight were visited by the recruiters. Two predominantly white universities were visited. A total of thirty-two students were interviewed; and to date, two have been accepted.

The CMR plans to continue its recruitment activities for the academic year 1974-75.

Terry Lee, Chairman
Committee for Minority Recruitment

NEW FACULTY

Sylvestor Petro

Sylvestor Petro, presently professor of law at New York University, will join the law faculty next fall. Professor Petro, received his undergraduate degree from the University of Chicago and subsequently earned his law degree in 1940 from its law school. During which time he served as Editor of the University of Chicago Law Review, and member of the Order of the Coif. From 1945-1949, Professor Petro was actively engaged in the practice of law as a member of the Illinois Bar. In 1950, he received his LL.M. from the University of Michigan.

Since 1950, he has been a member of the faculty of the New York University School of Law and professor of law since 1956. During which time he has taught Antitrust Law, Contracts, Trade Regulation, and Labor Law, as well as various seminars. Professor Petro, served as professor of public law at the University of Rome (Italy), for the academic year 1952-53, where he delivered a series of lectures on Labor and Constitutional Law. He has also served as a visiting lecturer at the

(continued on page 21)

Former Secretary of State Dean Rusk and Law School Dean Pasco Bowman chat before speech. Mr. Rusk, now Professor of International Law at the University of Georgia Law School visited Wake Forest on March 12. He held a seminar for students in the course on International Law in the morning, and made an address in the courtroom to students and visitors in the afternoon. The subject of his address was the validity of the concept of international law. Prof. Rusk briefly answered questions from the audience at the conclusion of his address.

AMERICAN BAR ASSOCIATION: SECTION OF INTERNATIONAL LAW

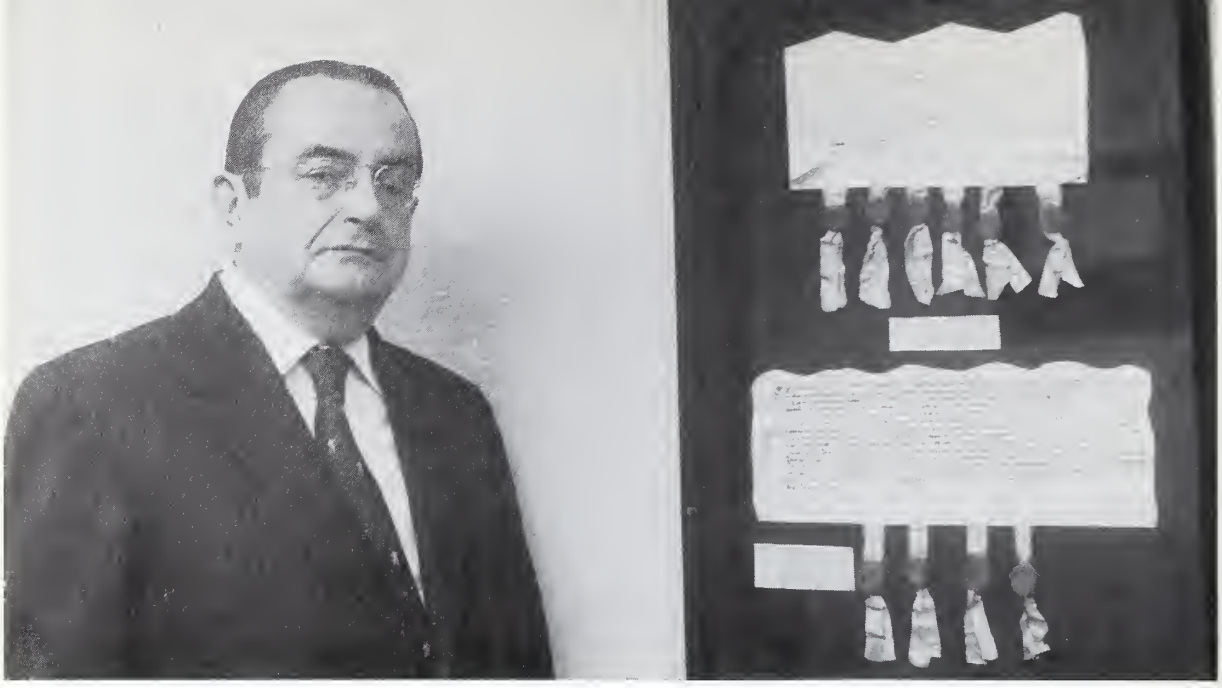
An international educational exchange and training program for U.S. and foreign lawyers is now under way. Organized by the Committee on Relations with Lawyers of Other Nations of the Section of International Law and funded in part by a grant from the Bureau of Educational and Cultural Affairs of the U.S. Department of State, a secretariat for the program has been established in the Washington D.C. office of the American Bar Association.

Under this program, exchange visitors will come to the United States and young U.S. lawyers will go abroad for a training period with participating host law firms. The visits will last from one to three months.

The program is open to any lawyer (law students are not eligible). Each young lawyer will be responsible for financing his own venture either by his own funds or through soliciting financial aid from sources other than the ABA. Each individual will also be required to demonstrate proficiency in the language of the country which he intends to visit.

Besides offering the young lawyer a chance to become familiar with the workings of a foreign law firm, it will also afford him the opportunity to immerse himself in another culture. The Association's Committee on Relations with Lawyers of Other Nations believes these mutually helpful exchanges can be of considerable value to members of the legal profession throughout the world.

All individual lawyers, law firms or general counsels of American companies wishing to participate in this program either as an exchange lawyer or as a prospective host to a foreign lawyer should write Nancy R. Jones, American Bar Association, 1705 De Sales St., N.W., Washington, D.C. 20036



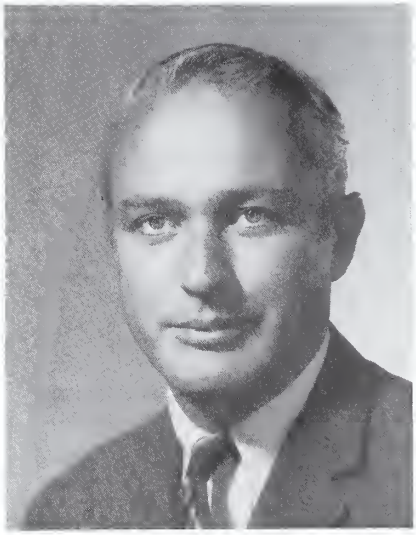
DEEDS GIVEN TO LAW SCHOOL

Seven original English land deeds, and a collection of art work depicting legal themes have been given to the law school by Dr. Robert E. Lee.

The deeds and art work have been put on display in the faculty library of the law school. The oldest deed was executed in 1250 as a deed of frankelmoin. Attached to the parchment writings are the seals of the parties. The most recently executed deed, dated 1852, features the "Great Seal" of the monarch of England, Queen Victoria. The other deeds include two from the fourteenth century, two from the fifteenth century, and one from the sixteenth century.

Dr. Lee acquired the first of his collection which visiting England in 1931. While a professor at the U.S. Army University at Shrivenham, England in 1945, Dr. Lee purchased more of the rare documents from the estate of a collector of ancient documents.

The collection of art work includes a portrait of Blackstone.



William R. Klaus, vice-chairman of the Philadelphia Bar Association, was the scheduled speaker at the Law Day Banquet on April 28.

(Billings on the ERA continued from page 5)

> Section 3. This amendment shall take effect two years after the date of ratification.

The first obvious limitation of the amendment is that it prohibits only "state action" denying equality of rights. Many of the most valid complaints raised by women are in the areas of unequal employment opportunities and pay discrimination based on sex. Unless such practices are the result of state action (i.e., legislative enactment, state enforcement, or hiring policies and pay scales in government jobs) they will not be eradicated by ratification of the ERA. In fact, federal legislation has already gone further than the ERA in prohibiting pay discrimination. By use of the federal government's power to regulate interstate commerce, Congress amended the Fair Labor Standards Act by addition of the Equal Pay Act of 1963 [29 U.S.C. Section 206 (d)] which requires that employers engaged in interstate commerce or in production of goods for interstate commerce pay equal amounts for the same work, regardless of sex, and Title VII of the Civil Rights Act of 1964 [42 U.S.C. Section 2000 (e) et seq.] prohibits all employment discrimination on the basis of sex not based on "bona fide occupational qualifications."

Likewise, the Congress has already done all it can in regard to equalization of employment opportunities in federal government jobs through the Equal Employment Opportunity Act of 1972.

The State of North Carolina also has gone as far as it could be compelled to go under the ERA to establish equality of opportunity in state jobs. North Carolina General Statutes Section 126-16, a 1971 act, provides:

> All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment, without regard to race, religion, color, creed, national origin or sex, to all persons otherwise qualified.

The only area left available for possible job discrimination is in employment by a private employer not engaged in interstate commerce or in production of goods for interstate commerce. If there is any such employer in existence when one considers the broad interpretation given by the courts to the term "interstate commerce," the ERA would be powerless to control him, because his action is not "state action." In fact, even after ratification of the ERA, Congress could repeal the Fair Labor Standards Act relating to employers in interstate commerce without violating its obligations under the constitution and the ERA.

The ERA will not require a change in the personal attitudes of men toward women or women toward themselves. Unlike the Thirteenth Amendment which abolishes involuntary servitude and provides that it shall not exist within the United States, the ERA does not and cannot abolish social attitudes and male egotism. The Constitution is not designed to be and should not become a vehicle for the regulation of social attitudes, which are constantly in a state of change. Rather, the Constitution is the blueprint for governmental powers and functions - and limitations. To amend the Constitution of the United States merely to *attempt* to effect a change in social attitude which the amendment is actually powerless to effect is to degrade the Constitution.

On the other hand, the ERA, if ratified, would make changes in many areas where there is presently a distinction in law between male and female, either through legislative action or court decision. Some of these

distinctions are admittedly without basis in reason or justifiable in today's society. They can and should be eliminated by those governments whose action created them, without waiting for federal coercion through ratification of the ERA. It seems patently absurd that a state legislature would ratify the ERA and in one full swoop abolish *all* laws making a distinction between male and female and yet would not be willing to repeal or amend those laws brought to its attention which are discriminatory without justification.

In fact, largely due to the debate over the ERA, the state legislators as well as the public are keenly aware of the injustice of indiscriminate legal differences based on sex, and state lawmaking bodies are repealing those laws which no longer have validity. By this method, each change is thoroughly examined in terms of its desirability before being effected, and any changes which are not desirable will be avoided. To effect these changes by a sweeping pronouncement like the ERA, however, would be very much like throwing the baby out with the bathwater. If only one area of sexual difference which should be preserved would be eliminated by the ERA, then the ERA is the wrong method to use.

Are there, then, any areas in which a legal distinction between men and women should remain?

In a strongly pro- ERA article in the Yale Law Journal, written by three female Yale law students and a male faculty member, the accurate observation is made that:

> It [the movement for equality] has been given impetus by the weakening of family ties . . . .

Some years ago when I read Aldous Huxley's *Brave New World,* I was appalled by the "future society" where children were produced in laboratories and reared in state-controlled centers where each child was programed to fit his pre-determined function. Motherhood was an abhorrent concept, and family life did not exist.

At that time no one had seriously questioned the idea that the family was at the center of our society, where each member was supported by the others against outside threats, and where parents could instill in their children concepts of morality or political ideology which the parents thought were good, and *Brave New World* seemed impossible of realization.

Today, the weakening of family ties, applauded by some women liberationists, along with the growing attitude that to be "just" a wife and mother is degrading has taken our society nearer to *Brave New World* than is healthy for society. In her search for her own identity, woman must not abdicate her responsibility to the family and to her children. I am not convinced that many women want to abdicate that responsibility.

What would be the probable effect of the ERA upon family ties?

Under the ERA, all laws placing upon the husband the primary responsibility for support of the family would be stricken down. A wife's obligation to support the children would equal that of the husband's, and the laws making it a criminal offense for a man to abandon his wife and fail to support her would be invalid. How could a woman meet her *equal* responsibility except by going to work outside the home, whether by choice or not?

No law requires that a woman stay at home if she elects not to. If a woman has no children or provides for suitable care for her children, her husband cannot secure the aid of the state to compel her to stay at home. If a woman is prevented from working outside the home because of her husband's personal opposition, the ERA will not change her situation. But under Equal Rights, if a woman desired to remain at home to raise the children and be a wife and mother, she could

be forced out of the home by her husband's refusal to support her and the children, and the State, pursuant to the ERA, would aid his claim that he has no more obligation to support the family than she does.

In 1967 North Carolina adopted legislation in regard to civil actions for support between husband and wife, eliminating terminology which designated the parties by sex and defining them in terms of "supporting" and "dependent" spouse. One sentence alone kept the statute from being completely non-sexual:

> A husband is deemed to be the supporting spouse unless he is incapable of supporting his wife.

[N.C. G.S. Section 50-16.1 (4).] Since the adoption of this statute, the North Carolina Court of Appeals and the District Courts have been literally swamped with cases involving the determination of whether the wife was or was not "dependent" upon her husband. If she is physically able to work but elects to stay at home because she is better satisfied in the role of homemaker than of business executive, is she "substantially dependent" upon her husband? And what about the woman who has worked for a time but elects to quit work and raise a family - can she change from the status of non-dependent spouse to dependent spouse by choosing to stay at home with the children?

These questions have not yet been answered satisfactorily, although litigation has been prolific. If the ERA should be ratified, the sentence by which the husband is deemed to be the supporting spouse would be made void. Thereafter, determination by the courts that a physically healthy wife, capable of earning support for herself, could choose to remain in the home and not enter public work would be more unlikely than it is presently.

No state action is required, of course, unless there is disagreement between the parties as to role. If the marriage parties agree between themselves to role sharing or role reversal, the state will not interfere. But in case a woman does not desire to reverse traditional roles with her husband, what is wrong with a pre-determination that as between two healthy adults, the man has the primary financial responsibility for the family?

An even more important question in North Carolina would be the effects of the ERA upon child support statutes. Presently the law places upon a father the primary obligation for the support of the child, freeing the mother, if she so chooses, to remain at home and supply the other-than-monetary needs of the children. But under the ERA, the state could not impose upon a father a greater obligation for child support than upon the mother, and if the mother were capable of working and earning money, she would be forced to do so in order to meet her financial duty to the child.

Can this result do other than further weaken family ties? If society cannot compel performance of a man's financial obligations to the family, his wife cannot be secure in her choice of the role of homemaker. Each adult member of the family in order to be secure must become self-sufficient and independent of the other. With lack of interdependence, one primary reason for marriage and an important compulsion to try to work out problems between the marriage partners disappears, and total breakup of the family occurs more frequently - to the harm of the children much more often and deeply than to the parents.

When both parents work, the children have to be cared for by someone. As more and more mothers are forced into the labor market, there is a growing cry for child-care facilities provided by the state. Isn't it strange that a society that 35 years ago was repulsed by the Nazi gymnasium where the State indoctrinated children to suit its own purpose should today be begging the government to take over the complete care and training of all children?

Children will be the real victims of ERA, for they will lose the opportunity to grow up in a secure home where dependable adults interested primarily in their welfare are available. Because the ERA will tend to force women out of the home, children will be reared in institutions, often supervised by the state. At a time when great attention is focused upon "individuality", we are placing our children more and more in group situations where their ideas, attitudes and aims are subject to group or even State control.

A second area in which the ERA would not permit distinction between the sexes and where distinction is valid is in compulsive military service. Proponents of the ERA admit that women will be subject to the same draft as men but say that deferments and exemptions would solve all problems caused by draft of women. But suppose a young woman of draft age has a child or children. Would the problem be solved by exempting all persons with a child? In a major call-up, this exemption would be too broad. Then perhaps the draft would exempt a parent only if no other parent remained in the home. That would at times require the mother to go to war while the father stayed at home with the child. I contend that neither the child nor the military service would in most cases have the person best suited to the purpose.

Another possible socially undesirable effect of an exemption for women with children would be a large population boom brought about by women who perfer pregnancy to military service.

Military service is now available to women who wish to volunteer. The only people who will be affected by the ERA are those women who do not wish to serve in the military, and I submit that that is the major proportion of women.

A third area in which the ERA's effects would be socially undersirable is in the area of personal privacy in sexual matters. At first glance, the argument that under the ERA, boys and girls could not have seperate restrooms appears ridiculous. But upon reflection, and after consideration of the literal court interpretation of other constitutional or statutory provisions, the argument loses its humor. One argument has been advanced that the Supreme Court has recognized a constitutional "right of privacy" which protects privacy in sexual matters. An examination of the Court's privacy doctrine, however, leaves only large questions and no assurances.

Mr. Justice Blackmun stated in the case of *Roe v. Wade,* – U.S. –, 35 L. Ed. 2d 147, 93 S. Ct. – (1973), that "The Constitution does not explicitly mention any right of privacy." In a review of the development of a concept of privacy based upon an interpretation of either the First, Fourth, Fifth, Ninth or Fourteenth Amendment or in the penumbras of the Bill of Rights, Justice Blackmun said:

> These decisions make it clear that only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty,' (citing case) are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, *Loving v. Virginia,* 388 U.S. 1, 12 (1967), procreation, *Skinner v. Oklahoma,* 316 U.S. 535, 541-542 (1942), contraception, *Eisenstadt v. Baird,* 405 U.S. 438, 453-454 (1972); id., at 460, 463-465 (White, J., concurring), family relationships, *Prince v. Massachusetts,* 321 U.S. 158, 166 (1944), and child rearing and education, *Pierce v. Society of Sisters,* 268 U.S. 510, 535 (1925), *Meyers v. Nebraska, supra." (Roe v. Wade,* supra, 35 L. Ed. 2d 147, 176-177)

None of these decisions had anything to do with whether there is any constitutional protection against the privacy of one

individual being invaded by another individual; the protection is against state action invading privacy. Thus, there is no guarantee that the state could prohibit the use by males of restrooms provided for females, or that state universities could compel separate dormitory housing for males and females, or that male and female prisoners could be housed separately. The list could go on.

Finally, simply the ratification of the ERA does not assure that the level of "rights" will always be raised when equalized. For example, present laws in some states prohibit women from working more than a specified number of hours, although men are not limited. If the ERA passes, equality could be achieved by placing the same limitation on men. The right of the state to do so might be justified by the social desirability of making jobs available to more people in a high-unemployment economy.

In summary, what is popularly called an Equal Rights Amendment could just as well be called an Equal Responsibility Amendment. The assumption of equal responsibilities by those women who are willing and able to do so is not now prohibited. To force those responsibilities upon a woman unwilling or unable to assume them would be an injustice to the woman, her children and society.

Rhoda Billings is a graduate of the law school, former District Court Judge and is a member of the faculty.

(Schoonmaker on the ERA continued from page 5)

American society has always confined women to a different, and, by most standards, inferior status. In the past the subordinate position of women, more than half the population, has been widely accepted as natural or necessary or divinely ordained.

Even our Senator Sam Ervin recognizes that there is discrimination as noted in his speech before the House Judiciary Committee, March 23, 1971, when he said, "I am convinced that most of the unfair discrimination against them (women) arise out of the different treatment given men and women in the employment sphere." He goes on to say, "women suffer many discriminations in this sphere, both in respect to the compensation they receive and the promotional opportunities available to them."

I shall not give statistics and document evidence of discriminations against women in all areas of endeavor and argue at this time for equality; that would be a separate paper of its own. Men are also discriminated against under present law.

The basic question is what method, or combination of methods, will be most effective in eradicating sex discrimination from the law?

There are three methods of making changes within the legal system to assure equal rights for men and women. The first is by extending the doctrine of *strict judicial review* under the Equal Protection Clause of the 14th Amendment to sex discrimination; the second method is by piecemeal revision of existing federal and state laws; and the third is by a new constitutional amendment, the Equal Rights Amendment.

Under the first method of extending the doctrine of strict judicial review of the Equal Protection Clause of the 14th Amendment to sex discrimination, the Supreme Court could conceivably interpret laws under the 14th Amendment to give women equal protection under the law, to treat women as "persons" under this amendment. The Supreme Court could, but it has not and does not. Strangely enough the 14th Amendment did not give women the right to vote. The President's Commission on the Status of Women in 1963 noted, "In no 14th Amendment case alleging constitutional discrimination on the account

of sex has the U.S. Supreme Court held that a law classifying persons on the basis of sex is unreasonable and therefore unconstitutional." More recent decisions indicate no substantial change in judicial attitude by the high court. In *Reed vs. Reed*, 404 U.S. 71, (1971), the Supreme Court invalidated an Idaho law which arbitrarily favored men over women as administrators of estates, but the Court left the burden on every woman plaintiff to prove that governmental action perpetrating sex discrimination is "unreasonable" instead of giving women protection as "persons" under the 14th Amendment.

Actually the framers of the 14th Amendment clearly did not intend its coverage to include women. An 1872 Supreme Court decision *(Bradwell vs. Illinois,* 83 U.S. 130), upheld a state statute which prohibited women from the practice of law in Illinois. In this case the U.S. Supreme Court held that women could constitutionally be denied a license to practice law on the mere grounds of their sex. In Justice Bradley's view, "The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life." In a 1908 Supreme Court landmark decision, *Muller vs. Oregon,* 208 U.S. 412, in an argument under the 14th Amendment equal protection clause and employment rights of women, the Court declared the principle, "Sex is a valid basis for classification."

In the second area of methods of making changes, piecemeal revision of state and federal laws, some legislative progress has been made toward equal rights. Congress approved Title VII of the Civil Rights Act of 1964, prohibiting sex discrimination unless sex is a "bona fide occupational qualification." The fact that the prohibition against discrimination on account of "sex" was added on the floor of the House, by amendment, and by some considered a tactic to defeat the entire bill, is only worth mentioning at this point. This Act, Title VII, however, only applies to employers of 25 or more persons, including employment agencies dealing with employers of 25 or more persons, and it requires some interstate connection. Congress also approved the Equal Pay Act which dictates equal pay for equal work regardless of sex. But these laws fail too often to reach discrimination in many areas where large concentrations of women are employed and allow substantial exemptions. The Equal Employment Opportunity Commission which enforces the Title VII, presently has a backlog of some 13,000 cases. Without a clear mandate from the nation concerning equality of rights, such as the Equal Rights Amendment, this piecemeal legislative approach on a state basis will continue to be spotty, slow, and economically depriving for women.

In the present legal structure there are laws which exclude women from legal rights, opportunities, or responsibilities. Some are in the form of legislation conferring special benefits or protections to women. Many of the efforts to create a separate legal status for women in the form of "special" rights and privileges stem from a good faith attempt to advance the interest of women. However, the effect has often been to reinforce the social, economic and legal subordination of women. For example, the law providing that an officer of the court talk privately with a woman entering a separation agreement or a real estate contract with her husbant to see if she is being coerced by her husband, lables women, just because of sex, as weak minded, dependent individuals. Sex is not the determining characteristic of whether one can be easily coerced into an unjust or unreasonable transaction. Married women employed outside the home have the "privilege" of no legal responsibility for support of the family; however, although they are in fact helping to support the family, as long as this "privilege" under law continues, women will never enjoy equality of job opportunity and equal pay for equal work.

Women's work will continue to be seen as work for pin money and will be paid for accordingly. In 1970, the average year round full-time woman worker made 58 cents for every dollar made by a man. In 1955 she made 64 cents for a man's dollar. (U.S. Department of Labor statistics)

The Effect of the Equal Rights Amendment

In general terms the ERA requires that the federal government and all state and local governments treat each person, male and female, as an individual. It does not require that any level of government establish quotas for men or for women in any of its activities. It simply prohibits discrimination on the basis of a person's sex; it applies only to governmental action; it does not affect purely social relationships between men and women.

The principle of equality does not mean that the sexes must be regarded as identical, and it does not prohibit States from requiring that there be reasonable separation of the sexes under some circumstances. Equality does not mean sameness. In this regard, the right to be free of sex discrimination would have to harmonize with other constitutional rights, such as the right to privacy as recognized by the Supreme Court in *Griswold v. Connecticut,* 381 U.S. 479 (1965). in *Griswold* the Supreme Court recognized an independent constitutional right of privacy, derived from a combination of various more specific rights embodied in the First, Third, Fourth, Fifth and Ninth Amendments. The exact scope of the right of privacy was not spelled out in the *Griswold* case. Yet it is clear from that decision that one important part of the right of privacy is to be free from official coercion in sexual relations. This right would likewise permit a separation of the sexes with respect to such places as public toilets, as well as sleeping quarters of public institutions.

Another collateral legal principle involves the traditional power of the State to regulate cohabitation and sexual activity by unmarried persons. This principle would permit the State to require segregation of the sexes for regulatory purposes with respect to such facilities as sleeping quarters at coeducational colleges, prison dormitories, and military barracks. It has been said that the great concern over these matters expressed by opponents of the ERA seem to have been magnified beyond all proportion.

One of the arguments used by some opponents of the ERA against the Amendment seems to be that woman is a reigning queen secure on her throne or pedestal and that the ERA would indeed sweep her off this pedestal. The basic problem with this analysis is that we as a nation and a world have long recognized that constitutional monarchies or reigns of the matriarchal or patriarchal variety are hollow symbols and have little relevance to power and authority in our world today. They serve merely as symbols of what life was in yesteryear. If the pedestal "protection" of women and the right of a woman to have true security in the home are to be top priority in our state, then legislators would have to reform divorce laws so that a loyal and faithful wife could not be divorced against her will on grounds not based on fault.

Leaving the fairytale picture of the American woman on the pedestal aside, in real life in 1972, women composed 44% of the wage earners in America; two-thirds of the adults living in poverty, however, were females. The Amendment can enhance the status of women as housewives and mothers. Freedom to choose whether to devote full time to the home or otherwise, will reinforce the significant contribution of the way of life of full-time housewives and mothers. The ERA will pave the way for placing equal value on the work done in the home and child raising and will establish a basis for social security benefits for the homemaker. The American housewife is the only person in our society who works over forty hours per week,

receives no guaranteed overtime or vacation pay or benefits, and does not even qualify for social security in her own right.

In the area of state laws, the state legislatures have the primary responsibility for revising those laws which are in conflict with the Amendment if ERA passes. The effective date of the ERA has been delayed for 2 years after ratification to give the states time to do this. In cases where the states have failed to act, no doubt the issues will be resolved by the courts. Legislative history and precedence do give some guidance in this area. The legislative history of the Amendment indicates that Congress expects any law truly beneficial to be extended to protect both sexes, while laws which are truly restrictive and discriminatory, would become null and void. There is Supreme Court precedence for this position which has been applied in many cases. Justice Harlan, in a concurring opinion (*Welsh v. U.S.*, 398 U.S. 333, 1970), noted that when a statute is defective because it does not include a particular class, a court may either declare the law a nullity or it may extend the coverage of the statute to include those who are aggrieved by exclusion. In a great many instances, the problem in our state could be solved simply by changing the laws to read "person" instead of "male" or "female".

In the area of the draft, Congress now has the power to include women in any military conscription. The ERA would not limit this power. Of course, the ERA will not require that all women serve in the military any more than all men are now required to serve. According to the Senate Judiciary Committee Report (No. 92-689), women who are unqualified or exempt because of responsibilities, for example, dependents, will not have to serve, just as men who are unqualified or exempt do not serve. Thus the fear that mothers will be conscripted from their children into military services if the Amendment is ratified is totally and completely unfounded. Congress will retain ample power to create legitimate sex neutral exemptions from compulsory service. Once in the service, women, like men, would be assigned to various duties by their commander, depending on their qualifications and the service's needs.

There are several areas of North Carolina law that would be affected by the Amendment. One area is employment. There are special statutes prescribing maximum work hours and comforts for women in certain lines of employment. While these laws were originally enacted to prevent women from being exploited, they now serve to restrict employment opportunities by keeping women out of some jobs which offer higher pay or advancement.

To the extent that these labor laws provide meaningful protection, for example a lunch break for a woman if she must work over 6 hours straight, and seats for female employees, men are today arbitrarily denied benefits they deserve. Maximum hour laws similar to North Carolina's have been struck down since 1966 as incompatible with Title VII of the Civil Rights Act of 1964 in at least 6 states and have been voluntarily dropped by legislatures in 8 other states. However, North Carolina's attorney general has rendered an opinion that he considers our law valid until directly attacked. Only a constitutional amendment which places responsibility with legislatures to conform state laws to the ERA's principles will prevent the constant attack in the courts on discriminatory laws separately in each of the 50 states.

Another area of great concern has been particular criminal statutes relating to sexual crimes. The Amendment will not invalidate laws which punish rape. Rape laws will remain constitutional although they may need rephrasing. This is because both the group which is protected, namely women, and the group which is punished, namely men, have unique physical characteristics which are directly related to the crime, to the act for

which an individual is punished.

It has been said by one opponent of the Amendment that the greatest advantage accuring to husbands under the ERA in our state will be in reference to alimony payments for support of the wife. However, under North Carolina law there will be little significant change in this area. The general statute N.C. Gen. Stat. § 50-16.1 now phrases alimony responsibility and right in terms of dependent and supporting spouse. At this time a husband in North Carolina is entitled to alimony if he is the dependent spouse and grounds exist. The only change under ERA would relate to the provision "the husband is deemed to be the supporting spouse." Either the clause would have to be deleted or it could be replaced by the clause, "the primary bread-winner is presumed to be the supporting spouse." This would depend on the intent and mood of the legislature. In practice I do not feel that either approach would have any great effect on present alimony awards to men or women, but it might require that evidence be introduced to prove that a particular spouse is indeed the supporting spouse.

Permanent alimony, until death or remarriage, is becoming a thing of the past in our state and over the nation. Also the statistics on non-payment and unenforcement drastically reduce the security the law implies for women considering the large number of marriage break-ups. According to the only nationwide study of alimony and child support made by a Committee of the American Bar Association in 1965, "alimony is only awarded in a very small percentage of cases." The courts are placing greater weight on a wife's capacity to earn.

The Amendment would not deprive women of any enforceable rights of support and it would not weaken the father's obligation to support the family. It would however bar a state from imposing a greater liability on one spouse than on the other merely because of sex. The Amendment would not require both a husband and wife to contribute identical amounts of money to a marriage. The support obligation of each spouse would be defined in functional terms. Where one spouse is the primary wage earner and the other runs the home, the wage earner would have a duty to support the spouse who stays at home in compensation for the performance of her or his duties.

Although in North Carolina the father has the primary obligation of support of minor children, women already have a duty to support minor children. North Carolina law places a duty on both parents to provide within their means for the necessary support of their minor children. It is criminal for either parent wilfully to neglect or refuse to provide for a child. (N.C. Gen. Stat. §s 14-322)

There are numerous other special statutes that "protect" women by giving women in North Carolina causes of action or criminal recourse for peeping toms, slander of an innocent woman, exemption from being classified as a tramp, homestead rights, a greater inheritance exemption, exemption from being drafted into the state militia, and other protections, some of which should be extended to men and some of which should be declared null and void. Many of these statutes serve to classify women with minors, weak minded, or just as a subordinate class. These "protections" are no fair exchange for the inferior image and second class status, low-paying jobs, and welfare benefits for which women are forced to settle in return.

Interestingly enough some of the same arguments made against the 19th Amendment in 1923 granting women the right to vote are being used some 50 years later, now, against the Equal Rights Amendment. It was argued that if women had the right to vote they would become full-time politicians and leave the homes, and it would lead to the

(continued on page 34)

PLACEMENT SERVICE

In the fall of 1972, the Placement Service of Wake Forest University School of Law came into full time existence. The Placement Service is jointly supported by the Student Bar Association and the Law School and is attuned to the employment needs of the students. This year the Law School has provided facilities for the Placement Office and seven rooms to conduct interviews for visiting law firms, corporations and government agencies. In addition to the service the Placement Service renders for the students at the law school, it is also available for alumni who wish to change employment or who are returning from service.

The main objective of the Placement Service is to find employment for the members of the graduating class. As of this writing, 50 of 102 students in the third year class have found employment. Practicing attorneys from the local bar and from all of North Carolina are encouraged to utilize the Placement Service to find part time or summer law clerks from the first and second year classes.

The Placement Service is always open to suggestions on how we can better serve the needs of the students, alumni and attorneys in the state. Enclosed in this publication is an Interview Request Form which can be filled out and returned to the Law School if you desire to visit the campus for employment purposes. If it is not possible for you to come to the school, the Placement Service will be happy to post your employment needs. The students may then contact you directly and the interview can be conducted at your convenience. If the Placement Service can be of service to you, please call upon us. You may write:

SBA Placement Director
Wake Forest University
School of Law
Box 7206 Reynolda Station
Winston-Salem, N.C. 27109

INTERVIEW REQUEST FORM

This form is for your convenience and may be completed and returned to the law school.

FIRM NAME:

ADDRESS:

AREAS OF PRACTICE:

INTERVIEW PREFERENCES:

REQUEST DATA SHEETS: _____ yes _____ no

Dates: Please indicate in the date which you would like to interview at the law school. We will correspond with you concerning the availability of that date.

STUDENTS AVAILABLE FOR SUMMER WORK

NAME	ADDRESS	AREA
Jane Atkins	4110 Student Dr., Apt. 3	Forsyth or Guilford Co.
Malcolm B. Blankenship	Rt. 2, East Bend, N.C. 27018 ph. 699-8795	Mecklenburg, Stokes, Surry, Forsyth Cos.
Grover Carrington	College Village, 21B	Forsyth Co.
Michael Cline	969 Stratford Rd. ph. 748-8260	Charleston, W. VA.
Christopher Crosby	P.O. Box 28 Kings Mountain, N.C. 28086	Anywhere
Michael Ellis	Box 9052 Reynolda Station	Greensboro, Burlington or Raleigh
Danny Higgins	P.O. Box 8786 Reynolda Station	Eden (Rockingham Co.)
Joey McConnell	1348 Brookwood Dr. ph. 748-1742	Winston-Salem, Greensboro, High Point, or Charlotte
John Parker	Rt. 1, Murray Rd. Winston-Salem, 27106	Eastern N.C.
Clark Smith	1125 Polo Road Winston-Salem, ph. 748-1753	Forsyth, Davidson, or Guilford
Richard Sparkman	704 Granville Dr. Winston-Salem	Winston-Salem, Greensboro, High Point
Sharon T. Rayle	Rt. 2, Box 488 Summerfield, N.C. 27358 ph. 643-4640	Greensboro, Winston-Salem
Robert M. Grant, Jr.	6225 Brewer Ave., No. 44 Clemmons, N.C. 27012	Forsyth or any adjacent county

(Petro continued from page 8)

University of Buenos Aires (Argentina), the Foundation for Economic Education, and at the University of Georgia School of Law.

Professor Petro, currently serves as an advisor to the American Conservative Union and to the Institute for Humane Studies. He is also a member of the Mont Pelerin Society and of the Board of Trustees of the Foundation for Economic Education. From time to time he has served as a consultant or expert witness before committees of the United States Senate, for example, Senator McClellan's historic investigation of wrongdoing in labor relations in 1957-59 and, more recently, Senator Ervin's Subcommittee on Separation of Powers.

A native of Chicago, Illinois, Professor Petro is married and the father of three children.

RECENT DECISIONS AND LEGISLATIVE PROPOSALS

CONSTITUTIONAL LAW: DUE PROCESS IN FORECLOSURE BY ADVERTISEMENT

Huggins v. DeMent, 13 N.C. App. 673, 187 S.E.2d 412, *cert. denied* 281 N.C. 314, 188 S.E.2d 897 (1972).

Plaintiff Huggins and his wife executed a deed of trust on their property to Deese, trustee for Central Finance Company, securing an obligation of $798.90. A judgment of $225.65 was entered in favor of Central Finance Company in January, 1969. In 1969, DeMent was substituted as trustee in lieu of Deese. Pursuant to directions from Central Finance Company, DeMent, as trustee, initiated foreclosure proceedings by posting a notice on the courthouse door and publication in the *Raleigh Times* for four consecutive weeks. Deese, the former trustee, was the highest bidder, but there was an upset bid. The property was finally sold June 12, 1969 to one Britt for $401.00; allegedly, it was worth in excess of $10,000.00. Plaintiff petitioned the court to declare the conveyance of trustee DeMent null and void because, among other exceptions: at no time did defendants DeMent or Central Finance Company advise or undertake to advise plaintiffs on the pendency of the said foreclosure proceeding; and the failure of defendants to give notice of the foreclosure proceedings was a violation of the constitutional rights of plaintiffs, in that they were deprived of their property without due process of law.

While categorically denying each allegation of plaintiffs, the North Carolina Court of Appeals held that the foreclosure was done pursuant to provisions in the agreement and N.C. Gen. Stat. § 45-21.17; that compliance with the provisions in the agreement and, of N.C. Gen. Stat. § 45-21.17 is all that is required by law; that the notice of foreclosure by sale as provided in the deed of trust and as required under the statute (advertisement at the courthouse door and in a newspaper) was sufficient to meet the minimum due process requirements. N.C. Gen. Stat. § 45-21.17(a) provides:

> When the instrument pursuant to which a sale of real property is to be held contains provisions with respect to posting or publishing notice of sale of the real property, such provisions shall be complied with, and compliance therewith is *sufficient notice* (emphasis added).

The gravamen of N.C. Gen. Stat. § 45-21.17(a) is that where there is a mortgage, deed of trust, or some other instrument conferring a power of sale with provisions for giving notice by posting or publishing, if it is conducted pursuant to the provisions specified, it will be held to be a valid conveyance. However, if the instrument does not specify procedures for giving notice in the sale of real property, N.C. Gen. Stat. § 45-21.17(b) provides that notice shall be given by posting it at the courthouse door in the county where the land lies and publishing it in a newspaper of a specified circulation. While the defendants in *Huggins v. DeMent, supra,* clearly comply with the statutory provisions. the United States Supreme Court recently raised some doubt as to whether N.C. Gen. Stat. § 45-21.17 is constitutionally sufficient to meet the minimum due process requirements.

In *Fuentes v. Shevin,* 407 U.S. 67 (1972) the Supreme Court held that prejudgment

replevin procedures, in Florida and Pennsylvania, which permit persons to obtain a writ of replevin through a process of *ex parte* application to a court clerk upon posting bond were unconstitutional in that such a procedure works a deprivation of property without due process of law. In reaching its decision the Supreme Court said:

> "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified .... It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner." *Fuentes v. Shevin, supra,* at 80.

In deciding that appellants' fundamental right to notice was not granted at a meaningful time, the Supreme court seemingly establishes a foundation for the contention that N.C. Gen. Stat. § 45-21.17 does not meet one's fundamental right to have notice at a "meaningful time or in a meaningful manner." In upholding the constitutionality of N.C. Gen. Stat. § 45-21.17 in *Huggins v. DeMent, supra,* at 679, the North Carolina Court of Appeals cited *D.H. Overmyer Co. v. Frick Co.,* 405 U.S. 174 (1972) holding that due process rights to notice and hearing prior to a civil judgment are subject to waiver. But in *Fuentes v. Shevin, supra,* at 95, the Supreme Court refuted this argument saying:

> There was no bargaining (in *Overmyer*) over contractual terms between the parties who, in any event, were far from equal in bargaining power. The purported waiver provision was a printed part of a form sales contract and a necessary condition of the sale.

The plaintiffs in *Huggins* were in the same precarious position as appellants in *Fuentes.* In *Huggins,* the provisions for foreclosure were printed in the instrument. However, the record did not disclose whether there was bargaining over whether personal notice should have been sent to plaintiffs at their last known address. But if the instrument did not contain any provisions for foreclousure, N.C. Gen. Stat. § 45-21.17 required notice by posting the same at the courthouse door and publishing it in a newspaper. In light of *Fuentes,* it would seem that N.C. Gen. Stat. § 45-21.17 should be repealed, and *Huggins* should be reconsidered.

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Willie A. Swann

SALES TAX: NOT A TAX ON PURCHASERS AND CONSUMERS

Fisher v. Jones, 15 N.C. App. 737, 190 S.E.2d 663 (1972).

Plaintiff managed a coin-operated laundry. He filed his sales and use tax report, paying a 3% retail sales tax less a "merchant's discount". At the same time plaintiff made demand upon the Commissioner of Revenue for a refund of the sales tax, alleging that the levy of a 3% sales tax on gross receipts received from "businesses known as launderettes and launderalls" as provided under N.C. Gen. State. § 105-164.4(4) (1957) was unconstitutional. Plaintiff stipulated at pre-trial that he operated a coin-operated laundry for the use and convenience of the general public.

The Superior Court entered certain findings of fact and concluded as a matter of law:

> 1. The plaintiff's business, referred to . . . as a 'coin-operated laundry' is a 'launderette' or 'launderall' as those terms are used in G.S. 105-164.4(4) and is subject to the tax levied upon laundries in G.S. 105-164.4(4);
>
> 2. Section 105-164.4(4) of the North Carolina General Statutes does not violate either the 'due process' or 'equal protection' provisions of the Constitution of North Carolina or of the Constitution of the United States, as the same apply to the plaintiff in this action.

Fisher v. Jones, 15 N.C. App. 737, 738, 190 S.E.2d 663, 664 (1972).

On appeal, plaintiff's contention that his "coin-operated laundry business" is not included within the definition of "launderette" is disposed of by the court not only by a rule of statutory construction, i.e., words must be given their common and ordinary meaning but also by pointing to the catch-all provision of N.C. Gen. Stat. § 105-164.4(4) (1957) which would encompass plaintiff's commercial establishment with the phrase "or any similar type business."

The plaintiff's second contention is that said statute deprives him of property without due process and equal protection because there are no means by which to effect collection. Plaintiff contends that N.C. Gen. Stat. § 105-164.4 (1957) imposes a tax on purchasers or consumers. He apparently derived this point from a contradiction in this statute. N.C. Gen. Stat. § 105-164.9 (1957) provides that it shall be a misdemeanor for a retailer to offer to absorb the retail sales tax. The implication is that this provision would not have been enacted unless the retailer may not be the taxpayer under the statute. See 41 N.C.L. Rev. 509 n.10 (1963).

Judge Morris rejects these arguments stating that the plaintiff has failed to meet the burden of showing financial loss by reason of the retail sales tax as administered. She concludes that the plaintiff is in error not only because N.C. Gen. Stat. § 105-164.4 (1957) expressly states that it is a privilege or license tax upon retailers but that failure to charge or collect the tax from purchasers does not relieve the retailer of any tax liability. Accord *Canteen Service v. Johnson,* 256 N.C. 155, 123 S.E.2d 582 (1962).

The court continued by citing the Constitution of North Carolina, Article I, Section 19, and the Constitution of the United States, Amendment XIV to the effect that the sales tax on retailers who sell merchandise through vending machines does not violate constitutional provisions relating to due process and equal protection.

There are apparent contradictions in the holding that the retailer pay the sales tax imposed. First there is the requirement that the retailer not absorb the tax, i.e., N.C. Gen. Stat. § 105-164.9 (1957). There is also the practical effect of N.C. Gen. Stat. § 105-164.4 (1957), which is that the consumer or purchaser actually pays the tax. However, neither argument is convincing to the Court of Appeals. The status of the retail sales tax imposed by N.C. Gen. Stat. § 105-164.4(4) (1957) is the same. The manager of a coin-operated laundry is not deprived of property without due process and equal protection on the grounds that there are no means by which to effect collection. The tax is a privilege or license tax on retailers and not a tax on purchasers and consumers. The vending machine owner simply must increase the price of the item enough to compensate for his payment of the tax.

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J. Calvin Cunningham

CHILD SUPPORT: DUTY OF THE PARENT TO COMPLY WITH CONTRACTUAL OBLIGATIONS

Shoaf v. Shoaf, 14 N.C. App. 231, 188 S.E.2d 19 (1972)

Plaintiff Peggy Shoaf initiated this civil action against her former husband, Ted B. Shoaf, for alimony and custody and support payments of a minor child. The plaintiff alleged the defendant willfully violated the terms of the consent judgment entered on June 11, 1970. The pertinent portions of the consent judgment provided that the defendant should pay to the plaintiff $500.00 per month, of which $300.00 would be alimony and $200.00 would be child support. The defendant filed a motion in the cause asking that the consent judgment "be modified so as to delete any requirement on the part of said defendant to pay monies or support payments to the plaintiff for the support of Jeffry Byron Shoaf."

The trial court concluded it was the intention of the parties to contract for the defendant to pay to the plaintiff child support money until Jeffrey Byron Shoaf attended his majority of 21 years of age. The lower court denied the defendant's motion and directed him to pay to the plaintiff the arrearage due under the terms of the consent judgment. The defendant's appeal to the Court of Appeals was rejected and it was concluded, "that it was the intention of the parties that the defendant would make payments for the support of his son . . . until said child attained 21 years of age."

The major issue presented in this case is:

Whether N.C. Gen. Stat. §.48A-2 (1971) relieved the defendant of his obligation to pay support for his son Jeffrey Byron Shoaf under the terms of the consent judgment dated 11 June 1970?

N.C. Gen. Stat. §48A-1 (1971) provided: "The common law definition of minor insofar as it pertains to the age of the minor is hereby repealed and abrogated." N.C. Gen. Stat. §48 A-2 provides: "A minor child is any person who has not reached the age of 18 years."

The defendant asserts that his son Jeffrey Byron Shoaf has reached his majority having become 18 years of age on 13 January 1971, and that as a result of N.C. Gen. Stat. §48A-2 the defendant is under no obligation to contribute to his support.

The court was of the opinion that after the enactment of N.C. Gen. Stat. §48A-2, a parent's legal obligation to support his or her child ends at the age of 18, absent a showing that a child is insolvent, unmarried and physically or mentally incapable of earning a livelihood. *Crouch v. Crouch,* 14 N.C. App. 49, 187 S.E.2d 348 (1972). However, the court went on to add that "contracts between parents providing for support and educational expenses of their children over and above their legal obligations to do so are binding and must be construed as any other contract." *Owens v. Little,* 13 N.C. App. 484, 186 S.E.2d 182 (1972). In the present case it was

held that the consent judgment was a valid contract made with the approval and sanction of a court of competent jurisdiction, and should be enforced as any other contract. The court quoted with approval 2 N.C. Index 2d, Contracts, §1 (1967), saying: "Laws in force at the time of execution of a contract become a part thereof, including those laws which affect its validity, constuction, discharge and enforcement."

The court concluded it was the intention of the parties to provide child support payments to the plaintiff until Jeffrey Byron Shoaf attained the age of 21 years, and the enactment of N.C. Gen. Stat. §48A-2 (1971) did nothing to render such a contract void. In arriving at this holding the court took into consideration the interpretation given the contract by the parties themselves prior to the controversy, in order to ascertain the meaning of the language used.

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David W. Greenfield

EXCEPTIONS AND ASSIGNMENT OF ERROR ON APPEAL: RULE 21 OF THE RULES OF PRACTICE IN THE NORTH CAROLINA COURT OF APPEALS

Danvenport v. Travelers Indemnity Company, 16 N.C. App. 572, 192 S.E.2d 612 (1972).

Plaintiff sued to establish defendant's liability on a judgment for personal injuries awarded by a jury against Mills. Mills was insured by defendant on liability insurance policy at the time of judgment. Trial was by the Court without a jury. After making detailed findings of fact and conclusions of law, the court gave judgment for plaintiff. Defendant appealed, making four assignments of error. No assignment of error was based on an exception duly noted in the record. The only exception noted by the defendant in the record was that defendant, "in apt time objects and excepts to Findings of Fact, Conclusions of Law and Judgments entered thereon." No reference to this or any other exception was made in defendant's assignment of error.

Chief Judge Raymond B. Mallard of the North Carolina Court of Appeals, writing in the *Wake Forest Jurist* has stated, "The Rules of Practice of the Court of Appeals of North Carolina have now been in existence for over four years, but despite this fact and despite the fact that these rules are not radically different from those of the Supreme Court of North Carolina, many lawyers continue to have difficulty in complying with the rules and thereby properly perfecting appeals." Proper attention to three principles of appellate review reiterated in *Davenport v. Indemnity Company, supra,* should aid the appellant in complying with Rule 21 of the Rules of Practice in the North Carolina Court of Appeals. The basic requirements of Rule 21 are that the appellant set out in the record on appeal the exceptions to the proceedings, rulings or judgments of the court, and that

the exceptions be stated and numbered briefly and clearly.

(1) An assignment of error must be based upon an exception duly noted; otherwise it is ineffectual. *Campbell v. NcNeil,* 15 N.C. App. 559, 190 S.E.2d 383 (1972). The appellate court does not have the function of searching the record for errors which may be prejudicial to an appellant; it is the appellant's duty, acting within the rules of practice, to point out to the appellate court the precise error of which he complains. *Nye v. University Development Company,* 10 N.C. App. 676, 179 S.E.2d 795 (1971), *cert. denied,* 278 N.C. 702, 181 S.E.2d 603 (1971). The exceptions which are presented to the court shall be stated clearly and intelligently by the assignment of error, and not by referring to the record, and therewith there shall be set out so much of the evidence or other matter of circumstance as shall be necessary to present clearly the matter to be debated. In this way the scope of the inquiry is narrowed to the identical points which the appellant thinks are material and essential, and the Court is not sent scurrying through the entire record to find the matter complained of. *Darden v. Bone,* 254 N.C. 599, 119 S.E.2d 634 (1961).

The form of the assignments of error must depend largely upon the circumstances of each case; however, they should clearly present the error relied upon without the necessity of going beyond the assignment itself to learn the question presented. The assignments of error must specifically show within themselves the questions sought to be presented, and a mere reference in the assignment of error to the record page where the asserted error may be discovered is not sufficient. *Re Adam's Will,* 268 N.C. 565, 151 S.E.2d 59 (1966).

Two notable exceptions to Court of Appeals Rule 21 require comment. In *State v. Jones,* 278 N.C. 259, 179 S.E.2d 433 (1971) the Supreme Court considered the assignment of error even though there was no exception as a basis for the assignment, because of the seriousness of the case (murder). Research would indicate that the ruling in *State v. Jones, supra,* is extraordinary and the appellant should not rely on the holding in the typical case. Rule 21 of the Court of Appeals also includes the following self-explanatory exception:

> . . . No exceptions not thus set out, or filed and made a part of the record on appeal, shall be considered by this Court, other than exceptions to the jurisdiction, or because the complaint does not state a cause of action, or motions in arrest for the insufficiency of an indictment.

(2) A broadside exception in the appeal entries does not bring up for review the findings of fact or the evidence on which they were based. *Sweet v. Martin,* 13 N.C. App. 495, 186 S.E.2d 205 (1972). A single exception to "the findings of fact and conclusions of law based thereon" has been consistently held by the Supreme Court to be "a broadside exception and ineffectual." *Hicks v. Russell,* 256 N.C. 34, 123 S.E.2d 214 (1961). An assignment of error to a finding of fact must indicate the page of the record where the findings of fact appears, and it is insufficient merely to refer to the page where the exception to the finding appears as an appeal entry. *Etheridge v. Butler,* 1 N.C. App. 582, 162 S.E.2d 82 (1968).

(3) Review is not completely precluded by failure to comply with Rule 21 of the North Carolina Court of Appeals. The appeal itself is sufficient to present the record proper for review and to raise the question whether errors of law appear on the face of the record. *In re Appeal of Broadcasting Corp.,* 273 N.C. 571, 160 S.E.2d 728 (1968); 1 N.C. Index 2d, *Appeal and Error,* § 28. A review which is limited to the face of the record proper presents the question whether the facts found support the judgment and whether the judgment is regular in form, but it does not

present for review any questions as to the findings of fact. *Fishing Pier v. Town of Carolina Beach,* 274 N.C. 362, 163 S.E.2d 363 (1968); 1 N.C. Index 2d, *Appeal and Error,* § 26.

A final suggestion to aid in complying with Rule 21 is that the appellant study closely Rule 19 (c) dealing with the grouping of exceptions. The most basic advice to the appellant comes from Chief Judge Mallard, "For the lawyer engaged in the appellate practice, the distinction among objections, exceptions, and assignments of error are vital ones and must be thoroughly understood as the initial step in properly preparing and presenting a case on appeal."

RESEARCH BIBLIOGRAPHY

1. *Campbell v. McNeil,* 15 N.C. App. 559, 190 S.E.2d 383 (1972).

2. *Sweet v. Martin,* 13 N.C. App. 495, 186 S.E.2d 205 (1972).

3. *In re Appeal of Broadcasting Corp.,* 273 N.C. 571, 160 S.E.2d 728 (1968).

4. Rules of Practice in the Court of Appeals of North Carolina, Rule 21 (1967).

5. 1 North Carolina Index 2d, *Appeal and Error* § 26 and § 28.

6. Mallard, Viewpoint, 3 *Wake Forest Jurist* 21 (Fall 1972).

J. Steven Brackett

Contracts: A Real Estate Broker's Right To Commissions

Ross v. Perry, 281 N.C. 570, 189 S.E.2d 226 (1972)

This case arises from a decision of the Court of Appeals (12 N.C. App. 47) as a matter of right, pursuant to N.C. Gen. Stat. 7A-30(2). Plaintiff is the widow of William F. Ross, who was a real estate broker in Greensboro. Defendent and his wife owned commercial real estate in High Point known as the Elwood Hotel Property. During 1943 Defendent's engaged Ross to find a long term lessee for the hotel: the agreement being that if Ross was successful, he would receive as compensation, at the Defendent's election, either $10,000.00 in cash or a commission of 5% of the monthly rental payments for the duration of the lease. The only memoranda of this agreement was a letter which Perry signed and sent to Ross, stating that Ross was to receive the 5% monthly commissions "as long as the lease is in force. No longer."

Subsequently, Ross leased the hotel for a term of 50 years, and received compensation pursuant to the original agreement, which continued in force until 1967 when the property was taken by the City of High Point: the building was torn down and the lease terminated. No rental payments were made pursuant to the lease subsequent to February 1, 1967. The condemnation award for the taking of the property was $942,500.00: 71% of which went to the owners, and 29% to the lessee.

Plaintiff contends that she is entitled to recover the present value of all unpaid rentals for the remaining period of the 50 years lease, as the lessor and lessee have agreed to a mutual cancellation of the lease thereby frustrating the brokerage commission contract.

Essentially, the issue in this case is one of contract interpretation. The general rule that a real estate brokers' right to commissions arises when he negotiates a sale or lease within the terms of his authority has not been abrogated. However, this rule may be modified by an agreement between the parties themselves, and, when the product of such mutual accord is a written contract it shall control according to the plain and unambiguous tenor which the parties have imparted to it. This rule is of long standing in North Carolina, and is reaffirmed here.

The nature and extent of a condemnation award were also considered by the court. A condemnation award "is the purchase price which the condemnor pays for the fee simple title to the land"; its amount is representative of the fair market value of the property at the time of taking. The owner is not entitled to a direct recovery for lost rents, as the capacity of the property to generate income is reflected in the appraisal of its fair market value. Yet the tenant will be allowed to share in the condemnation award when he is injured by the forced termination of the lease: i.e., where his lease has been a bargain, the rent of comparable properties being higher. Of course, a payment such as this is not rent. It is a recognition of the tenants leasehold estate as an integral part of the value of the fee.

RESEARCH BIBLIOGRAPHY:

1. 12 C.J.S. *Brokers* § 59 (1938)
2. 29A C.J.S. *Eminent Domain* § 198 (1965)
3. 12 Am. Jur. 2d *Brokers* §195 (1964)
4. *Neal v. Marrone,* 239 N.C. 73, 79 S.E.2d 239 (1953)
5. *Jones v. Realty Co.,* 226 N.C. 303, 37 S.E.2d 906 (1946)
6. *Barham v. Davenport,* 247 N.C. 575, 101 S.E.2d 367 (1957)

Thomas R. Frizzell

VIEWPOINT

This installment of Viewpoint expresses the reflections of two recent graduates on the pitfalls of starting practice. Mr. J. Larkin Pahl, '72, presents the viewpoint of the lawyer who begins from scratch. He and his partner, Mr. Carl W. Hibbert, also a '72 graduate, practice in Raleigh.

Mr. Gary B. Tash, '71, remained in Winston-Salem after graduation as an associate in the firm of Randolph and Randolph. These insights into the world of law practice provide direction and counsel to the law student and recent graduates who are considering private practice.

LAW SCHOOL GRADUATION AND THE PRIVATE PRACTICE OF LAW

The private practice of law appears to be a somewhat forbidding endeavor for recent law school graduates. This is perhaps due to a lack of self-confidence among graduates in their legal ability and training. Nevertheless, for those that dare, there is a great deal to be said for entry into the private practice immediately out of law school. Certainly it carries the recommendation of myself and my law partner. For those that find their heart and their standard of living will allow such an undertaking, this article may prove to be helpful.

As in any profession, the realistic manner of its operation can only be learned by experience. This quality which by necessity a very young lawyer lacks can be acquired by several means. The graduate that chooses to enter the private practice on his own in his first year out of law school will absorb this experience in an intense manner. While his education will not be the same as one who elects to work with a large firm, in terms of self-confidence and general awareness, he is building a very strong foundation. The absence of a senior partner's guiding throughts and directions will manifest itself from time to time, but will also have the effect of forcing the recent graduate to rely upon his own ability and direct his practice in a responsible manner. In weighing the advantages of practice with an experienced attorney or law firm and those associated with a new practice, one should not discount the availability of lawyers in the community generally. Lawyers for the most part are very anxious to assist and cooperate with an inexperienced, young attorney, provided that the latter indicates a willingness to profit from his association and discard any pretentions of premature ability. This cooperative spirit is impossible to overemphasize and extends as well to judges, clerks, and law enforcement officials, all of whom have valuable advice with respect to a particular aspect of the practice of law. This is to say that there are those in the profession who are eager to lend their experience to new members of the bar.

To avoid depicting a "come on in, the water's fine" situation, the disadvantages and hazards of such a venture must be pointed out. Financially, times may be hard and budgets stretched. An independent source of income must be available in order to assure peace of mind. While there may be notable exceptions, prospective clients are not inclined to test the abilities of young, inexperienced attorneys. The requirements, therefore, of developing a sound practice relate back to a theme mentioned in the previous paragraph, that being the cooperative and generous spirit of fellow members of the bar in one's community. Referrals are an economic necessity as well as a professional challenge. By their nature these matters are not the most lucrative, yet offer to the young attorney an opportunity to flex his legal skills, develop a sense of confidence, and gain experience.

One area of the practice of law which the recent graduate may have particular difficulty in coping with is office management. Finding and organizing a law office from a practical standpoint can be an overwhelming task. When coupled with the necessity of accurate bookkeeping and sound secretarial services, these requirements may seriously infringe upon the young attorney's time and freedom to practice law. In attempting to cope with these problems the advice of experienced attorneys is invaluable and one should also consult with and refer to the North Carolina Bar Association and its many fine publications.

A related matter of extreme difficulty to most young attorneys is the setting and collection of attorney's fees. Here there is a natural tendency to underestimate the professional value of one's services, and to communicate this uncertainty to clients. Skill in this area comes with experience and confidence from having performed similar services on previous occasions. Many seasoned practitoners advise that this particular aspect of the profession weighs heavily upon younger attorneys. For the enthusiastic graduate,desirous of rendering what assistance he is able to offer, this often seems an unnatural sequence to clumsily refer to one's compensation for such efforts. However, for the individual, entering the practice upon matriculation, it requires only a brief period of time to overcome whatever hesitancy there may be to discuss the legal fee. This increasing confidence with respect to fees extends to the collection process as well. Many clients will not be the most responsible by nature and will require a certain amount of prodding before payment will be forthcoming.

Practicing law immediately upon graduation from law school is a very exciting and satisfying experience. The young lawyer is most severely handicapped by the lack of "how to do it." His recent law school training leaves him well prepared to handle the theory involved in most legal problems, but does very little to solve his practical dilemma. Graduates who work with established firms avoid this inadequacy, yet seemingly sacrifice some of the reward and satisfaction that comes from acquiring the practical aspects of the profession on one's own. The adage of "learning from mistakes" is applicable here, tempered with the ever present willingness of most members of the bar to be of assistance.

In conclusion, let it be said that this article is not written in order to entice more graduates into the private practice of law. Rather, it is an effort to suggest some of the important considerations that should be weighed by one contemplating such a decision. It occurs to this writer that law school graduates generally are more talented than they might otherwise believe, lacking in only self-confidence and experience. To some degree the deficiencies may be overcome by a genuine desire to learn, a freshness of thought, and enthusiasm for the practice of law. For the graduate willing to undertake the challenge and assume the responsibility, the opportunity exists to fashion his own career. Incumbent upon him is the need to realize the inherent limitations of his ability and the undeniable right of the client to expect and receive quality legal services.

J. Larkin Pahl

PRACTICE WITH AN ESTABLISHED FIRM

Having graduated from Wake Forest Law School in 1971 and joined the Winston-Salem law firm of Randolph and Randolph, I have been asked to reflect upon my experiences and impressions during my first year as an associate with a small firm engaged in the general practice of law.

Obviously, the decision of whether to join a firm or to hang out one's own shingle is not an easy one and depends upon the individual, what type of practice he desires, and the location he is considering. The chief attraction of an established firm is security. In addition to a dependable income from his salary, which may also include other fringe benefits in the larger firms, the new associate can count on moral support and legal assistance from the more experienced members. All firms provide the recent graduate with a proven office routine, at least the essential books of a reference library, a complete form file, and a regular and varied clientele through whom he can apply his knowledge and gain invaluable experience. Many larger firms also offer detailed training programs for their young associates and then permit them to specialize and develop expertise in particular aspects of legal practice which they have found to be especially appealing.

On the other hand, when the young law school graduate joins a firm, he necessarily must sacrifice some of the independence and individuality that his peers starting out on their own are able to enjoy. Also, while the older members of the bar are generally tolerant of the shortcomings of the novices, they tend to expect a little more from the ones who have the resources of a firm behind them. Likewise, the eager new associate may find his hopes for trial experience thwarted by the time he has to devote to running errands and doing research for the other members in the firm. And, of course, there is always the frustration of being handed a client's case file that someone else has already begun, but, for a variety of reasons, cannot complete.

To the individual law school graduates whose future plans are uncertain or to those who seek the advantages of both individual and firm practice, I commend the small law firm. It provides security with a minimum of specialization and loss of freedom. The initial salaries may not compare with those offered by the larger firms, but full partnership status is more readily obtainable in the smaller firms. And, of course, one can always gain multifarious experience in a small firm and later branch out on his own, if he so elects, after having had an opportunity to become familiar with the locality and the needs of its residents.

Whether with a firm or on his own, the young attorney will surely find the practice of law to be both disconcerting and rewarding; challenging and exciting. He will soon discover that, while his law school studies were essential for developing basic knowledge and logical approach patterns, he still has a great deal to learn from a practical and procedural point of view. The ivory tower theories from law school days are not always as dependable in the actual practice. Each case is just as unique as the individual client involved, and the only way to obtain the practical skills imperative to becoming an effective advocate is through experience.

To those of you who are about to enter your first year of practice, I offer these ideas and suggestions:

1. Devote as much time as you can initially to each new problem that arises, but strive for efficiency as soon as possible. Long hours may be necessary at first, but a good attorney must learn to cope with time limitations and be able to handle several cases simultaneously. Establish your priorities and organize your schedule to achieve maximum results. Each Friday I make a general list of the major

projects I must handle the following week, and I make a more specific list every morning of the activities for that particular day, scratching off each item as it is completed.

2. Never be afraid to admit that you do not know or are not sure how to accomplish a particular task. It is far better to ask questions first and then follow through with the correct procedure, than to pretend that you understand what is required and then make a mistake which could jeopardize your client's position. An attorney whom I respect very much once told me that the principal difference between his twenty years of experience and my one year was that he was more comfortable with his own ignorance. Get to know the personnel in the Clerk's office and ask their advice. They deal with the requisite forms and procedures everyday and will be happy to assist you.

3. I cannot overemphasize the importance of preparing written briefs for even the simplest of trials. In addition to presenting your argument to the Court in a clear and precise manner, having to organize a brief assures that you yourself understand the law involved in your case and avoids the possibility of you overlooking or misinterpreting some crucial point.

4. Always prepare your witnesses for trial by asking them questions in your office which you plan to employ in court or which you expect the opposing counsel to ask. Their testimonies will be more valuable if they know what to expect. At any rate, make certain that they realize that you want them to tell the truth, to use their own words, and not to answer any question that they cannot understand. It would also be beneficial for you as an attorney, if at all feasible, to observe the trial of a case similar to your own, if it is to be your first appearance in a particular court or your first trial in a specific field of law.

5. Whenever you make an oral agreement with another attorney or mail documents to a client, make sure that you write a letter covering all the pertinent details of the transaction. The copy of the letter which you retain for your file will serve as a permanent record for refreshing your own memory, as well as helping to avoid the possibility of any later misunderstandings.

6. When a prospective client telephones to make an appointment to see you, try to ascertain briefly the nature of his situation or problem. This procedure will afford you ample time for any general research you may need to do in order to be better prepared for the interview, before he comes into the office. It would also be wise to determine in advance the appropriate fee basis, since most clients will want some idea of what your services will cost them.

7. Never write a letter to an opposing party threatening litigation, unless your client has first given you full authority to proceed and you actually intend to pursue the matter to judgment. Otherwise, your letters will eventually lose their effectiveness. On the other hand, do not overlook the advantages to be gained from compromise and out-of-court settlements. In a close case, accepting a certain partial recovery for your client would probably be more advisable in some instances than risking an adverse verdict at trial. Also, unless you can determine that such would be useless, I suggest that you contact a potential defendant in a civil action by letter before filing the complaint. There is always the possibility that such a party might be willing to cooperate with you in order to avoid a lawsuit, but not after being actually served with process in an action that has already become a matter of public record. At any rate, unless you are faced with a statute of limitations deadline, all that you will have lost for the additional effort are a few days and an eight-cent stamp.

8. Never assume. The law is always subject to change and needs to be checked, while facts are subject to exaggeration and need to be verified.

As a young attorney, your first year or so of practice can and will be very important. You will develop many habits which will stay with you throughout your career, and the initial impressions you make on your fellow practitioners may well have a bearing upon your future effectiveness and success. Be confident, yet humble; firm, but polite; and remember that dedication and experience will be your greatest allies.

Gary B. Tash

Schoonmaker on the ERA
continued from page 19

destruction of the family. It was argued that women must be protected from the evils of politics as it is now argued that women must now be protected from the evils of equality.

Meyressa Schoonmaker is a graduate of the law school and a practicing attorney in Winston-Salem.

ALUMNI NEWS

The following alumni were selected to show the diversity of specialization and the varying fields in which Wake Forest law graduates have become involved.

These graduates have commented on their chosen careers and imparted advice to the law student concerning the study and preparation for similar professional specialization.

Mr. Frank Utley Fletcher, '32, has a private practice of law in Washington, D.C., specializing in communications law.

Mr. Fletcher was born in Sparta, North Carolina in 1912. Prior to law school at Wake Forest, he graduated from high school in Raleigh and had two years pre-law at North Carolina State. After graduating from Wake Forest Cum Laude in 1932 with a LL B degree, Mr. Fletcher studied two years at Duke University where he took special courses in the field of Public Law. He was admitted to the North Carolina Bar in 1933.

This background led him in 1934 to seek the administrative law field with the Government. Mr. Fletcher obtained a job with the Federal Communications Commission with which he was associated for five years. After leaving the Commission he entered private practice in which he continues today. Mr. Fletcher is currently associated with thirteen other lawyers, all of whom specialize in the communications law field. His practice includes Community Antenna Television Systems, Microwaves, Domestic Satellites, etc. He is a member of the Bars of the District of Columbia and United States Supreme Court.

In speaking of nearly 39 years of service, Mr. Fletcher commented that "In specializing in communications law practice—principally before the Federal Communications Commission - you have the experience of bringing into being enterprises that successfully combine the opportunity to make money with the opportunity of being of service to the community. No matter what his background, a broadcaster becomes a factor in community life—usually for the betterment of community."

W. Linville Roach

W. Linville Roach, '55, is an attorney with the Greensboro office of Pilot Life Insurance Company.

Mr. Roach was born in Norlina, North Carolina in 1931. He attended public schools in Lewston and Wendell, and entered Wake Forest College in the fall of 1949 in the combined degree program. He was graduated in 1955, passing the North Carolina Bar that same year.

After serving three years in the U.S. Navy, assigned to the Staff Judge Advocate Corps, Mr. Roach returned to North Carolina. After considering both private and corporate law practice, he joined Pilot Life Insurance Co. in 1959.

The courses that Mr. Roach has found most important in his position have been security transactions, estate planning, taxation, corporations, negotiable instruments, and insurance.

In preparing for a vocation as "In-house

Counsel" with a life insurance company, Mr. Roach suggests that a law student should pursue these courses as though he were preparing himself for an affiliation with a law firm. Basic legal training is essential to both vocations with possible special emphasis on the suggested courses. Essential to any success is one's appreciation of people, particularly his employees. Without a basic understanding of people Mr. Roach feels that one's ability to make quick and accurate decisions and to give advice will be limited. Also very helpful is one's awareness of the need for research in other jurisdictions. Because a life insurance company operates in many states, knowledge of those state statutes, regulations and cases is required.

One of the great advantages to being an "In-house Counsel" is the relative personal freedom which is often not available to an attorney affiliated with a law firm whose clients consist of the public at large.

Mr. Roach envisions great growth for this position as corporations continue to grow. For this reason, this field will continue to offer outstanding and financially rewarding opportunities.

Captain Norman G. Lancaster

Captain Norman Gray Lancaster, '38, is a career military lawyer with the Judge Advocate General Corps of the U.S. Navy.

Captain Lancaster was born in Castalia Township, Nash County, North Carolina, and graduated from Castalia High School in 1933. He attended Wake Forest College during 1933-1935 and Wake Forest College School of Law during 1935-1938. After graduation and admission to the North Carolina Bar in 1938, he engaged in the general practice of law in Spring Hope until December 1940.

In August of that year Captain Lancaster joined the Navy "V-7" program and attended the Reserve Midshipman School at Northwestern University from December, 1940 until March, 1941. Immediately upon being commissioned he reported aboard the light cruiser USS PHOENIX for duty. He remained in this assignment for a time, and in December 1943 he was assigned to the light cruiser USS MIAMI. On both ships he served as a line officer.

In 1946 Captain Lancaster was removed from unrestricted line duty and designated a legal specialist by the Secretary of the Navy, limiting his duties to the legal field. A law degree and admission to practice before the

highest court of a state are the prerequisites to being assigned to legal duty with the Navy. The formation of the Navy's Judge Advocate General Corps in 1967 superseded the previous organization of Navy legal personnel, and became Captain Lancaster's new branch designation.

During the past twenty-six years, Captain Lancaster has had extensive experience in the military criminal law field as defense counsel, prosecutor, trial judge and appellate judge. He was also assigned legislative attorney duties for more than three years. He gained more than eight years of experience in the field of international law from tours of duty as Legal Adviser to the Naval Base Commander, Subic Bay, Philippines; Senior Legal Adviser to the Commander-in-Chief, U.S. Pacific Forces; and Senior Legal Adviser to the Commander-in-Chief of U.S. Naval Forces, Europe. During these tours of duty, Captain Lancaster was responsible for legal matters pertaining to rights and obligations related to the use of the high seas, base rights, and status of forces agreements. These duties required him to participate in negotiations and consultative meetings in Korea, Japan, Nationalist China, the Philippines, Vietnam, Australia, the United Kingdom, Italy, Greece and West Germany.

Captain Lancaster unreservedly recommends a career in the Judge Advocate General Corps of the Navy, to anyone who is interested in a varied practice of the law and enjoys traveling.

J. E. Landers

J. E. Landers, Jr., '52, is currently the officer in charge of the Winston-Salem office of the Estate and Inheritance Tax Division of the Trust Department of Wachovia Bank and Trust Company.

Mr. Landers was born in Camden, New Jersey in 1927 and moved to Mars Hill, North Carolina in his early years. He graduated from Mars Hill College in 1946. After serving in the U.S. Army for eighteen months he entered Wake Forest College in the fall of 1948 as a junior under the combined degree program, receiving his LLB degree in 1952. He passed the North Carolina Bar in August of that year.

While in law school Mr. Landers became interested in the field of estate planning. His interest went beyond the basic course in estate planning to the related courses in trusts, wills, and taxation.

Upon completion of law school, Mr. Landers began work in the Tax Division of the Trust Department of Wachovia in the fall of 1952. Mr. Lander's work entails the preparation, filing and subsequent audit of appropriate Federal Estate, North Carolina Inheritance, and other state Inheritance Tax Returns of estates for which Wachovia is acting in a fiduciary capacity. Much of the work is with revenue agents, attorneys and certified public accountants. It involves

extensive reading and research of the various federal and state tax laws.

Mr. Landers suggests that those who wish to pursue trust work, either with a bank or in private practice, take courses in undergraduate school in accounting and fundamental business courses such as analyzing financial statements. In law school, he recommends courses in taxation, wills, trusts, insurance and estate planning.

Mr. Landers feels taxation in reference to estates and their administration and planning is an especially challenging and rewarding field.

CLASS NOTES

1957

Joseph F. Schweidler, Secretary-Treasurer of the Real Estate Licensing Board was elected the 1973 president of the National Association of Real Estate License Law Officials (NARELLO) at its annual conference in Las Vegas, Nevada recently.

NARELLO is composed of the real estate commissioners and administrative officers of the fifty states, District of Columbia, Virgin Islands and several Canadian Provinces. Its primary purpose is the better administration and enforcement of real estate license laws.

James Guy Revelle, Jr., is presently practicing in Murfreesboro, North Carolina in the firm of Revelle & Burleson. He has a general practice.

Mr. Revelle is married to the former Gertrude Johnson. They have two children: Helen Gertrude, 14 years old, and James Guy III, who is seven.

1964

Donald Lee Smith has been appointed superior court judge for Wake County (19th Judicial District) by Governor James Holshouser.

1972

Steve Adams has joined the law firm of Ward and Ward in New Bern, N.C.

John Linder Barber has joined the law firm of Hudson, Petree, Stockton, Stockton, and Robinson in Winston-Salem.

Clinton Sherman Forbis, Jr. has joined the law firm of Rutledge and Friday in Kannapolis, N.C.

Henry Daniel Froneberger, Jr., is working toward his master's degree in law in urban problems at the George Washington University School of Law and is working in the U.S. Bureau of Mines hearing division in Washington.

Army Second Lt. Walter C. Kirk, Jr., recently completed an eight-week medical service corps officer basic course at the medical field service school, Brooks Army Medical Center, Ft. Sam Houston, Texas.

Rodney Remus Goodman, Jr., has joined the law firm of Kirk and Ewell in Wendell.

Woodrow Gunter II has joined the law firm of Webb, Lee, Davis, and Gibson in Rockingham, N.C.

Charles H. Harp II has joined the law firm of DeLapp and Hendrick in Lexington, N.C.

George Hughes has joined Stokes County attorney William F. Marshall, Jr., in the practice of law in Danbury, N.C.

Larry E. Leonard has begun the practice of law in association with George A. Saintsing in Thomasville, N.C.

Jerry Cash Martin has been appointed assistant solicitor for North Carolina's 27th Judicial District.

Gary Calvin Rhodes has joined the Salisbury, N.C., law firm of Gary Carlton.

Howard L. Williams is studying toward a master's degree in law and taxation at George Washington University School of Law and working in the Chief Counsel's office of the U.S. Treasury Department.

HELP!

We Need Alumni Information

JURIST ALUMNI INFORMATION FORM

Name: _____ Year Graduated: _____

Home Address: _____

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Are You A Member Of A Legal Fraternity? _____ If Yes, Specify _____

Are You Engaged In A General Practice of Law? _____

List All Public Offices, Professional, and Civic Honors and Activities, With Dates:

Please Give Brief Account Below Of Personal Items Of Current Intrest: (Recently Married, Birth Of A Child, Current Professional Positions, Professional Plans In The Immediate Future, etc.)

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